



What Happened to Democrats' Demand for Up-or-Down Votes?

- Until now, the overwhelming majority of Senate Republicans and Democrats agreed that every judicial nominee who came to the Senate floor deserved an up-or-down vote.
- Republican and Democrat leaders repeatedly fought off efforts by a small minority of Senators who disagreed, and they guaranteed that the nominations received those votes.
- The result was the preservation of the traditional, majority-vote standard for confirmations — regardless of who the President was, and regardless of which party controlled the Senate.
- It was due to that bipartisan cooperation that no judicial nomination with clear majority support has ever been denied an up-or-down vote on the Senate floor.

The following are only a fraction of the statements by Senate Democrats demanding up-or-down votes for judicial nominations:

Senator Biden

“But I also respectfully suggest that everyone who is nominated ought to have a shot, to have a hearing and to have a shot to be heard on the floor and ***have a vote on the floor***. . . . It is totally appropriate for Republicans to reject every single nominee if they want to. That is within their right. But it is not, I will respectfully request, Madam President, appropriate not to have hearings on them, not to bring them to the floor and not to ***allow a vote***”
(March 19, 1997)¹

Senator Boxer

“According to the U.S. Constitution, the President nominates, and the Senate shall provide advice and consent. ***It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.***” (May 14, 1997)

¹ All statements are from the *Congressional Record* unless otherwise noted. All emphasis is added.

Senator Daschle

“I find it *simply baffling that a Senator would vote against even voting on a judicial nomination*. . . . We have a constitutional outlet for antipathy against a judicial nominee — a vote against that nominee.” (October 5, 1999)

Senator Durbin

“I think that responsibility requires us to act in a timely fashion on nominees sent before us. The reason I oppose cloture is I would like to see that the Senate shall also be held to the responsibility of acting in a timely fashion. If, after 150 days languishing in a committee there is no report on an individual, the name should come to the floor. If, after 150 days languishing on the Executive Calendar that name has not been called for a vote, it should be. *Vote the person up or down. They are qualified or they are not.*” (September 28, 1998)

Senator Feinstein

“*A nominee is entitled to a vote. Vote them up; vote them down*. . . . What this does to a [nominee’s] life is, it leaves them in limbo . . . It is our job to confirm these judges. If we don’t like them, we can vote against them. That is the honest thing to do. *If there are things in their background, in their abilities that don’t pass muster, vote no.*” (September 16, 1999)

“Our *institutional integrity* requires an up-or-down vote.” (October 4, 1999)

“Mr. President, the time has come to act on these nominations. I’m not asking for a rubber stamp; let’s hold hearings on those nominees who haven’t had them, and *vote on all of them, up or down, yes or no.*” (May 14, 1997)

Senator Kennedy

“The Constitution is clear that only individuals acceptable to both the President and the Senate should be confirmed. The President and the Senate do not always agree. But *we should resolve these disagreements by voting on these nominees — yes or no.*” (January 28, 1998)

“*We owe it to Americans across the country to give these nominees a vote.* If our Republican colleagues don’t like them, vote against them. But *give them a vote.*” (February 3, 1998)

Senator Kohl

“[T]here are many other deserving nominees out there. Let’s not play favorites. *These nominees, who have to put their lives on hold waiting for us to act, deserve an ‘up or down’ vote.*” (August 21, 1999)

Senator Lautenberg

“Talking about the fairness of the system and how it is equitable for a minority to restrict the majority view, ***why can we not have a straight up-or-down vote on this without threats of filibuster?*** When it was Robert Bork or John Tower or Clarence Thomas, even though there was strong opposition, many Senators opposed them. The fact is that the votes were held here, up or down.” (June 21, 1995)

Senator Leahy

“When President Bush nominated Clarence Thomas to the U.S. Supreme Court, I was the first member of the Senate to declare my opposition to his nomination. I did not believe that Clarence Thomas was qualified to serve on the Court. ***Even with strong reservations, I felt that Judge Thomas deserved an up-or-down vote.***” (June 21, 1995)

“I cannot recall a judicial nomination being successfully filibustered. I do recall earlier this year when the Republican Chairman of the Judiciary Committee and I noted ***how improper it would be to filibuster*** a judicial nomination.” (October 14, 1997)

“I hope we might reach a point where we as a Senate will ***accept our responsibility and vote people up or vote them down.*** Bring the names here. If we want to vote against them, vote against them.” (October 22, 1997)

“If we want to vote against somebody, vote against them. I respect that. State your reasons. I respect that. But don’t hold up a qualified judicial nominee. . . . ***I have stated over and over again on this floor . . . that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty.*** If we don’t like somebody the President nominates, ***vote him or her down.***” (June 18, 1998)

“I . . . do not want to see the Senate go down a path where a minority of the Senate is determining a judge’s fate on votes of 41 [D]uring the Republican administrations I rarely ever voted against a nomination by either President Reagan or President Bush. There were a couple I did. ***I also took the floor on occasion to oppose filibusters to hold them up and believe that we should have a vote up or down.***” (September 16, 1999)

“I do not want to get having to invoke cloture on judicial nominations. I think it is a ***bad precedent.***” (September 16, 1999)

“Nominees deserve to be treated with dignity and dispatch, not delayed for 2 and 3 years. We are talking about people going to the Federal judiciary, a third independent branch of Government. They are entitled to dignity and respect. ***They are not entitled automatically for us to vote aye, but they are entitled to a vote, aye or nay.***” (October 1, 1999)

Senator Leahy, continued:

“When we hold a nominee up by not allowing them a vote and not taking any action one way or the other, we are ... doing a *terrible disservice to the man or woman to whom we do this.*” (October 3, 1999)

“The Chief Justice of the United States Supreme Court said: ‘The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should *vote him up or vote him down.*’ Which is exactly what I would like.” (March 7, 2000)

“I have said on the floor, although we are different parties, I have agreed with Gov. George Bush, who has said that in the Senate *a nominee ought to get a [floor] vote, up or down, within 60 days.*” (October 11, 2000)

Senator Levin

“The President is entitled to his nominee, *if a majority of the Senate consent.*” (June 21, 1995)

Senator Lincoln

“If we want people to respect their government again, then *government must act respectably.* It’s my hope that we’ll take the necessary steps to give these men and these women especially *the up or down vote that they deserve.*” (Press Conference, September 14, 2000)

Senator Reid

“Once they get out of committee, let's bring them here and vote up or down on them.... *I think anybody who has to wait 4 years deserves an up-or-down vote.*” (March 7, 2000)

“If there is a Senator who believes there is a problem with any judge, whether it is the one we are going to vote on at 5 o'clock or the two we are going to vote on tomorrow, or Thursday, *they have every right to come to talk at whatever length they want.* But with Judge Paez, *it has been 4 years. There has been ample opportunity to talk about this man.* He has bipartisan support.” (March 7, 2000)

“[W]e should have *up or down votes* in the committee and on the floor.” (Transcript of an interview on Evans, Novak, Hunt, and Shields, June 9, 2001)

Senator Schumer

“The basic issue of holding up judgeships is the issue before us, not the qualifications of judges, which we can always debate. The problem is it takes so long for us to debate those qualifications. It is an example of ***Government not fulfilling its constitutional mandate because the President nominates, and we are charged with voting on the nominees.***” (March 7, 2000)

“I also plead with my colleagues to move judges with alacrity — vote them up or down. But ***this delay makes a mockery of the Constitution***, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo.” (March 7, 2000)